



PESTICIDE REGULATION SECTION NEWSLETTER

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MARY ELLEN SETTING APPOINTED MDA DEPUTY SECRETARY

One of Maryland's most important agricultural and consumer protection leadership positions is now filled with



the promotion of Mary Ellen Setting as deputy secretary of the Maryland Department of

Agriculture (MDA). The position had been vacant since May 2009 when Governor Martin O'Malley appointed former Deputy Secretary Buddy Hance to his post as Secretary of the agency. Setting has served as Assistant Secretary of Plant Industries and Pest Management for the agency since January of 2004.

"We are very pleased to announce this appointment," said Sec. Hance.

"Mary Ellen Setting's extensive experience and leadership with the agency, respect among industry professionals and her peers, as well as her common-sense approach to managing a diverse range of regulatory and service programs will

be a great asset to the O'Malley-Brown Administration, the department and to the Marylanders we serve. Her vision will help guide our outstanding staff and strengthen MDA's important programs for the benefit of all Marylanders."

As some of our readers may recall, Mary Ellen was hired by MDA in 1977 to fill an entomologist position in the Pesticide Regulation Section where she was responsible for coordination and implementation of the section's licensing and certification programs. In December of 1988, she was appointed to the position of Chief, Pesticide Regulation Section, where she was responsible for the overall administrative direction and managerial leadership for the Section. In January 2004 she was appointed to the position of Assistant Secretary of of Plant Industries and Pest Management for MDA. In this position she was responsible for oversight of the Pesticide Regulation, Forest Pest Management, Plant Protection and Weed Management, Turf and Seed, Mosquito Control and State Chemist's Sections.

PERSONNEL NOTES

It has been quite a while since our last newsletter. At that time we had four vacant positions, one secretary and three inspectors. Since then, MDA's Pesticide Regulation Section (PRS) has experienced a number of changes in our staff. We lost four secretaries and three inspectors. Secretaries Mary Jackson, Lynda Maupin and inspector Gregg Morris retired from state service. Secretary Florence Jordan was promoted to another position within the department, while Becky Poulin left state service to pursue a career in the horticultural industry. Inspector Phil Davidson was promoted to another position with the department's State Chemist Section and Howard Brown accepted a position with the District of

Columbia's pesticide regulatory program. We wish our best to Mary, Lynda, Florence, Becky, Gregg, Phil and Howard.

With the loss of the staff noted above, we have been very fortunate to have been able to replace all but one of these positions. Our secretarial staff was cut from four positions to three. Since the last newsletter, the PRS has welcomed the following new staff members:

Brehanu Argaw – Inspector II
Sheila Fellaw - Office Secretary II
Jessica Koontz – Office Secretary III
Glenn Krout – Inspector IV
Therese Montano – Office Secretary II
Russell Noratel – Inspector III
Scott Rowe – Inspector III
Samarkaroon Yapa – Inspector III

REGULATIONS UPDATE

In February 2008, MDA submitted a proposal to amend Section .02 under (COMAR 15.05.01) the regulations pertaining to the Maryland Pesticide Applicator's Law. The proposed amendment was to incorporate by reference the U.S. Environmental Protection Agency's (EPA) final pesticide container and containment rule (40 CFR 165, Pesticide Management and Disposal) which became effective August 16, 2006. A notice of the proposed amendments was published on February 1, 2009, in the Maryland Register. Following a comment period, in which no comments were received, the Secretary of Agriculture adopted this amendment to the regulations. The amendment became effective April 7, 2008. EPA's rule includes standards for 1. pesticide containers and containment for agricultural pesticide producing establishments; 2. pesticide retailers and commercial pesticide applicators to have secondary containment around large stationary (bulk) tanks; 3. and containment pads for pesticide mixing,

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Photo – Pesticide mixing and loading pad loading, and repackaging areas. The requirements will help protect the environment from accidental spills and leaks at pesticide pesticide container refilling areas and bulk storage sites.

The PRS is continuing to conduct compliance assistance inspection to provide the regulated community with outreach information on how to comply with the container and containment regulations. In this effort, the PRS has posted a “Pesticide Containment Regulations: What You Need To Know” brochure on MDA’s website. This brochure assists in determining if you are subject to the containment regulations and provides the specific requirements associated with the regulations. It can be found at the following link:

www.mda.state.md.us/go/pest/contain.php

In September 2009 MDA, submitted a proposal to amend Section .08 under (COMAR 15.05.01) the regulations pertaining to the Maryland Pesticide Applicator’s Law. The purpose of this amendment was to eliminate overlapping licensing requirements with the Maryland Department of Natural Resources (DNR). A notice of the proposed amendment was published on September 11, 2009 in the Maryland Register. No comments were received and the regulation amendment became effective November 16, 2009. As a result, any person who holds a current Wildlife Damage Control Permit from DNR under COMAR 08.03.15 is **not** required to hold a license, permit or certificate for wildlife pest control under the Maryland Pesticide Applicators Law, if that person does

not 1) provide damage control services for European starlings, feral pigeons, and house sparrows; or 2) use pesticides, including repellants, in the course of that person’s operations. DNR also amended the language in their Wildlife Damage Control Permits regulations. Their regulations now state that a wildlife damage control permit is not required to control European starlings, feral pigeons and house sparrows if the person is licensed by the Maryland Department of Agriculture in Category 7-C (Wildlife Control) as defined in COMAR 15.05.01.08. MDA and DNR worked cooperatively on these regulation changes with representatives of the National Pest Management Association and the Maryland State Pest Control Association.

PROPOSED LEGISLATION

MDA is proposing legislation to establish an annual registration fee of \$30 to register each employee of a pest control business, other than certified applicators, who perform pest control services. Each year MDA’s PRS processes (issues, deletes, or replaces) an average of 4,778 employee registration cards. In the past the PRS has been able to cover the costs associated with registered employee identification cards through General Funds and Special Funds (license, permit and certification fees). Due to the loss of State General Funds two years ago and increasing costs (printing, mailing and staff) this fee is now needed to cover these costs. MDA is also proposing legislation to establish a late fee of \$30 for any license, certificate, or employee registration renewal that is received by MDA more than 10 days after the expiration of the license, certificate, or registration. Lastly, MDA is proposing legislation to revise the language in the current law to require a \$10 fee for each certification examination retaken.

PRS LICENSING, CERTIFICATION ACTIVITIES

During 2009, the PRS issued the following:

Commercial Licenses	-	1,371
Not-For-Hire Licenses	-	160
Commercial Applicator	-	3,134

Certificates	
Public Agency Permits	310
Dealer Permits	- 146
Employee registration	- 15,060

In addition, PRS held 18 certification examination sessions during which a total of 888 individuals took one or more certification exam. During the 18 examination session, a total of 2,677 examinations were administered.

PRS USE INSPECTION AND ENFORCEMENT ACTIVITIES

During 2009, the PRS completed the following activities:

Routine business inspections	809
Businesses in violation	243
Most frequently cited violations	
Record keeping	143
Vehicle identification	43
Unregistered employee	26
No anti-siphon device	25
No customer information	14
Pesticide dealer inspections	78
Consumer complaint investigations	31
Pesticide use observations	79
Market place inspections	30
Pesticide producer inspections	28

In addition, the PRS issued the following enforcement activities:

Field Notices	23
Notices of Warning	357
Civil Penalties	33
Totaling	\$10,510

Additional information regarding PRS regulatory actions can be found at the following webpage:

<http://www.mda.state.md.us/newsroom/enfact.php>

PRS SPECIAL PROGRAMS ACTIVITIES

During 2009, the PRS again offered the recycling program for empty plastic pesticide containers to growers and commercial pesticide applicators at 20 locations in the State. Collection centers were maintained in nine counties (Caroline, Frederick, Harford, Kent, Prince George’s, Talbot, Washington and Wicomico) with the assistance of county government agencies. A total of 128 collection days were held from June through September. In addition, 13 pesticide dealer/custom applicators participated in inspection

and collection of containers at their own facilities. A total of 49,000 containers weighing nearly 22 tons, were collected from 135 participants, of which 30 were first time participants. The containers were processed for transporting to a plastic recycling facility.

TRAINING EVENTS

At the request of EPA, the PRS hosted a six member delegation, of the Chinese Ministry of Agriculture's Institute for the Control of Agrochemicals in August of 2009. The delegation was visiting the



Chinese delegation and EPA staff visit MDA

United States to learn how pesticides are regulated. Staff from EPA headquarters and EPA's Region III offices provided the delegation with information on how pesticides are regulated at the national level while PRS staff provided the delegation with information on how pesticides are regulated at the State level. Discussions were also held on the working relationship between the State and EPA. Topics covered included business license and applicator certification requirements, pesticide applicator training, enforcement activities (routine compliance inspections, pesticide misuse and accident/incident investigation), pesticide product registration and enforcement actions.

The PRS also hosted the annual EPA Region III State Pesticide Inspector's Workshop in 2009. The workshop funded by EPA was held October 5 – 9, 2009 in Ocean City, Maryland. Fifty-seven inspectors from Maryland, Delaware, Pennsylvania, Washington D.C., Virginia and West Virginia were in attendance. Respirator fit testing and health and safety training were

provided to the inspectors during the workshop. The workshop agenda included presentations on the importance of Personal Protective Equipment (PPE) to prevent pesticide exposures, conducting inspections at pesticide producing establishments and market places where pesticide are sold; pesticide label interpretation; concerns and challenges of invasive species control; and investigating fish kills. The agenda also included a field trip to the Sarbanes Ecological Science Center where a mock investigation exercise of a simulated bird kill took place. During the workshop an awards dinner was held. After the dinner the keynote speaker was MDA's Assistant Secretary for the Office of Plant Industries and Pest



Group photo of Inspector Workshop participants

Management, Mary Ellen Setting. Following her speech, she and Dr. Fatima El Abdaoui, EPA Region III Branch Chief for the Pesticides and Asbestos Branch, presented the EPA Region III Inspector of the Year award to Jeff Bastian of the Pennsylvania Department of Agriculture. PRS Inspectors Jack Schnaitman, Albert Davis, Peter "Petey" Counell, Phil Davidson and Greg Morris have all won this award in the past. Petey Councell is a two time receipt of this coveted award.

EPA ACTIVITIES

EPA PROPOSES NEW GUIDANCE ON PESTICIDE DRIFT LABELING

To better protect people and the environment from potential off-target spray and dust drift, EPA has been actively engaged in a number of initiatives. These initiatives include, but are not limited to, broadening the understanding of the science and

predictability of pesticide drift, improving the clarity and enforceability of product label use directions and drift restrictions. On November 4, 2009, EPA Office of Pesticide Programs (OPP) proposed new guidance for pesticide product labeling by issuing a draft Pesticide Registration (PR Notice) on Pesticide Drift Labeling. PR Notices are issued by EPA to inform pesticide registrants and other interested parties about important policies, procedures, and pesticide registration related decisions. This PR Notice is currently open for comments. You can view the Federal Register Notice, PR Notice, related documents and submitted comments at:

<http://www.regulations.gov/search/Regs/home.html#home>

search using the following ID "EPA-HQ-OPP-2009-0628". The comment period closes on March 5, 2010.

Those wishing to provide comments should view the Federal Register Notice found at the website listed above, as it contains tips and information on how to prepare and submit comments. Additional information regarding EPA's initiatives related to pesticide spray and dust drift can be found on EPA's OPP website at:

<http://www.epa.gov/pesticides/factsheets/spraydrift.htm>

EPA PURSUING DISCLOSURE OF HAZARDOUS INERT INGREDIENTS

The EPA is moving forward with a plan to require the listing of hazardous inert ingredients on pesticide product labels. EPA is also reported to be considering requiring the disclosure of all pesticide inert ingredients. They anticipate initiating rulemaking through the issuance of an Advance Notice of Proposed Rulemaking (ANPR), which it expects to publish by the end of the year.

Some of the issues EPA has to consider are whether the disclosure should be made on the pesticide labels or through other means, such as Web resources, and how inert ingredients will be identified, e.g., by common chemical name, trade name or Chemical Abstract Service (CAS) name.

In addition to pursuing regulatory action for inert disclosure, EPA is also considering encouraging voluntary initiatives to achieve broader disclosure of inerts.

EPA REQUIRES NEW SAFETY MEASURES FOR SOIL FUMIGANTS

Following re-registration reviews of soil fumigants EPA is requiring new safety measures for the following soil fumigants: chloropicrin, dazomet, metam sodium/potassium, and methyl bormide. These safety measures are being required to mitigate risks and increase protections for agricultural workers,



Soil Fumigation Operation

bystanders and people who live, work, or otherwise spend time near fields that are fumigated. Due to their volatile nature, soil fumigants have the potential to pose risk concerns to people involved in the the application, workers who re-enter fields that have been fumigated and people who may be near the treated area. The mitigation measures EPA is requiring include:

- Worker protections;
- Fumigant management plans;
- Stewardship and training programs;
- Good agricultural practices;
- Buffer zones;
- Posting requirements; and
- Emergency preparedness and response measures

Detailed information on the new requirements for soil fumigants, including Specific Mitigation Measures Fact Sheets, can be found on EPA's website:

http://www.epa.gov/oppsrrd1/reregistration/soil_fumigants/index.htm

CLEAN WATER ACT DISCHARGE PERMITS AND PESTICIDES

On November 27, 2006, EPA published a Clean Water Act (CWA) final rule regarding pesticide applications to waters of the United States. The rule stated that pesticides applied to waters of the United States consistent with all relevant requirements under the Federal Insecticide, Fungicide, and Rodenticide Act do not constitute the discharge of a pollutant that requires an National Pollutant Discharge Elimination System (NPDES) Permit in the following two circumstances:

1. The application of pesticides **directly** to waters of the United States in order to control pests. Examples of such application include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States.; and
2. The application of pesticides to control pest that are present **over waters** of the United States, **including near** such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target pests effectively.

In December 2006, petitions for review were filed by a number of environmental groups in 11 Circuit Courts. These petitions were consolidated in the 6th Circuit. On January 7, 2009 the 6th Circuit Court of Appeals vacated EPA's CWA pesticide rule, stating that the rule was not a reasonable interpretation of the CWA. Prior to this ruling pesticide regulation was exclusively under FIFRA. The ruling now allows the CWA authority to regulate aquatic pesticides. Following the 6th Circuit Court ruling, EPA petitioned the Court and was granted a two year stay of the mandate. Therefore, the court action does not take effect until April 10, 2011. EPA requested the two year stay to have time to:

1. Develop general permits for states and tribes that do not currently have EPA authority to issue NPDES permits.

2. Work with NPDES authorized states, like Maryland, to develop its general permits.
3. Provide education and outreach to stakeholders.

There are a number of important points pesticide applicators need to be aware of and understand. The types of pesticide applications the order covers include: mosquito control, irrigation canal and supply ditch weed control, drainage ditch bank and shoulder weed and insect control, aquatic weed control in lakes, ponds and streams, invasive pest control in any aquatic habitat, forestry sites with streams under the canopy, and lake or pond renovation.

The CWA does exempt agricultural storm water runoff and irrigation return flows from the rule. However, almost any other instance in which pesticides enter water will now be classified as a discharge of a pollutant to the waters of the United States, which under the CWA will require an NPDES permit. The NPDES permits are typically required by waste water treatment plants and industrial facilities that generally have a single point where their water discharges are made. Pesticide applications to water **have not been addressed previously**. As a result, both state and federal regulators are working together in an effort to implement the court order in a reasonable manner to avoid undesirable results.

Pesticide applicators should also be aware that the Maryland Department of the Environment (MDE) is the state agency that is responsible for issuing NPDES permits in the State of Maryland. MDA will be following EPA and MDE planning and progress on implementing the court order and the NPDES permitting process for pesticide applications. The Pesticide Regulation Section will continue to provide information, on this issue, to the pesticide application industry as it become available.

WOOD DESTROYING INSECT INSPECTION REPORTS

The regulations regarding the inspection and reporting of wood destroying insects have not changed significantly since they were adopted in 1987. It has always been the position of this department that evidence of wood destroying insects observed in objects (mulch, soil, landscaping timbers or any other objects), not attached to the structure, **is not evidence that the structure is infested**. In fact, MDA has consistently advised the structural pest control industry that evidence of wood destroying insects found in objects outside of the structure's foundation should be reported in the additional comments section of Form MD-1. However, realtors have made significant changes, since 1987, to the wood destroying insect inspection clause found in real estate contracts. Most notably, they have added language inferring evidence of wood destroying insects found within a specified distance of the exterior of the foundation is an indication the structure is infested.

The person ordering the inspection should specify which structures or other areas are to be inspected. **Inspection of areas not attached to the structure(s) is not required by regulation, but inspection of outside areas is permitted.** If you inspect areas not attached to the structure you are required to report the findings. There are two options for fulfilling this

reporting requirement. Which option you select depends on what you list in the "Structure(s) Inspected" box on the Form MD-1. Option 1 - If you list that you inspected only the structure, or structure and attached garage, any evidence of wood destroying insects observed outside of the structure should be listed in Section V, under "Additional comments" on Form MD-1. Option 2 - If you list that you inspected the structure and other areas and objects within a specified distance (e.g., 3 feet, 10 feet, etc.) from the structure, you can list this evidence in item B of Section 2 of Form MD-1. However, **you cannot state the evidence observed is evidence the structure is infested**. To avoid the possibility of presenting misleading information when using option 2, MDA recommends you also include a statement in Section V, Additional Comments, that the evidence you observed, in areas or objects, outside the structure **is not evidence of infestation in the structure**. As stated previously, depending on what you list in the Structure(s) Inspected box, you may select either option when completing Form MD-1.

PESTICIDE REGULATION SECTION REMINDERS

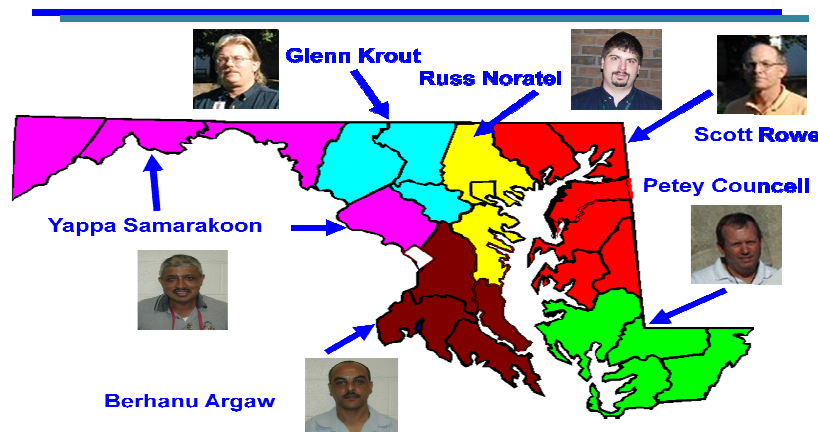
- **Record Keeping** - Incomplete record keeping continues to be the most frequently cited violation. Be sure you and your employees are making and maintaining completed pesticide application, inspection and pest identification records. Maintaining pesticide application,

pesticide recommendation and/or pest inspection records electronically is fine. However, these records must be made immediately available, on request, to MDA.

- **Employee Training, Registration and Notice of Termination** – Be sure to **make and maintain** training records for all employees who perform pest control services. Regulations require these records to be maintained for the duration of the employee's employment. Make sure to register with MDA's PRS **each employee** who performs pest control. When registering an employee, be sure to submit a 1 inch X 1 inch color photograph of the employee. When a registered employee leaves your employment make sure you **notify the PRS** that the employee is no longer employed by your firm or agency. Also, registered employees **shall carry** their MDA issued registered employee identification card with them when they are providing pest control services. The employee is required to show this card, upon request, to any interested person.

- **Insurance** - The regulations pertaining to the Pesticide Applicators Law require licensees to maintain liability insurance and furnish a certificate of insurance to the department. The licensee shall keep the insurance in force for the licensing period.

INSPECTOR REGIONS



**BEST WISHES FROM THE MARYLAND
DEPARTMENT OF AGRICULTURE'S
PESTICIDE REGULATION SECTION STAFF
FOR A HAPPY NEW YEAR**

PESTICIDE REGULATION SECTION
50 Harry S. Truman Parkway
Annapolis, Maryland 21401
(410) 841-5710 www.mda.state.md.us

Dennis Howard, Chief
Pesticide Regulation Section

Ed Crow, Entomologist
Certification & Training Program Coordinator

Rob Hostetter, Entomologist
Enforcement/Special Programs Coordinator

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

EARL F. HANCE
Secretary of Agriculture

MARY ELLEN SETTING
Deputy Secretary

